

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

DAVID O. COOPER,

Plaintiff,

Case No.: 3:13-cv-272

vs.

MONTGOMERY COUNTY, OHIO
SHERIFF'S DEPARTMENT, *et al.*,

District Judge Walter H. Rice
Magistrate Judge Michael J. Newman

Defendants.

**REPORT AND RECOMMENDATION¹ THAT (1) THE ENTRY OF JUDGMENT
(DOC. 17) BE RESCINDED; AND (2) THIS CASE BE RE-OPENED**

This is a *pro se* case which the Court dismissed on February 26, 2014 for Plaintiff's lack of prosecution. *See* doc. 16. No appeal was taken of that Order, and the time for doing so has since passed.

Plaintiff is incarcerated, and he failed to prosecute this case or respond to the Court's Show Cause Orders. *See* docs. 2, 4, 9, 11, 14. The Court is now in receipt of Plaintiff's notice, dated March 12, 2014, in which he clarifies his address is the medical facility at the Orient Correctional Reception Center. *See* doc. 18. In that notice, he states, "[I am] unsure if [my] mail is getting to the Court[]" *Id.* at PageID 49. He adds, "I sent a notice of clarification of address" and "I've not heard anything from the Court since Oct.-Nov. 2013" *Id.* at PageID 51.

Acting in an abundance of caution, and in the interest of justice, the Court finds good cause exists to assume Plaintiff did attempt to respond to the Court's prior Show Cause Orders,

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

but that his mail was somehow lost or misplaced -- perhaps on account of his prison transfer to a medical facility.

Plaintiff advises the Court that his new address is: P.O. Box 300 Orient, Ohio 43146.

The Court thus **RECOMMENDS** that the Entry of Judgment be rescinded and the Clerk of Courts be ordered to re-open this case.

The Court notes that Plaintiff has yet to file his USM 285 forms and his civil cover sheet. The Clerk of Courts shall mail those forms to *pro se* Plaintiff along with this Report and Recommendation. Plaintiff shall promptly submit those forms to the Clerk.

April 1, 2014.

s/ **Michael J. Newman**
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendation. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to **SEVENTEEN** days because this Report and Recommendation is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F), and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report and Recommendation objected to, and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof. As is made clear above, this period is likewise extended to **SEVENTEEN** days if service of the objections is made pursuant to Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140, 153-55 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).